



October 15, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

CC Docket No. 02-6

Subject: **Request for Review/Appeal**&/or Waiver, if Appropriate, of a Universal Service Administrative Company (USAC) Decision

Reference (USAC Document/Decision):

1. USAC Funding Commitment Decision Letter (FCDL) Denial, Funding Year 2012, dated August 21, 2012, Referencing FCC Form 471 Application Number 865085, FRN2356358(Attachment 1)

To Whom It May Concern;

Dublin City School District (DCSD) respectfully appeals and requests the FCC review the funding denial decision made by the Universal Service Administrative Company (USAC), Schools and Libraries Division (SLD) for Funding Year (FY) 2012 (see Attachment 1) related to the district's application for cellular phoneservices citing a State Replacement Contract. We request the FCC assess the basis of USAC's denial decision, the information provided here, and reverse USAC's denial decisionand/or waive the deviation from USAC's State Replacement Contracts guidance, as appropriate, and fund Dublin City School District's FY2012 FCC Form 471 Application# 865085, FRN 2356358, for \$27,189.92.

Applicant Name: Dublin City School District
Billed Entity Number: 127425

Funding Year 2012:

Form 471 Application Number: 865085
Funding Request Number (FRN): 2356358
Service Provider: State Replacement Contract
Service Provider Identification Nbr (SPIN): 143999999

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USAC Administrator FCDL Decision

The following reason for denial was given in USAC's referenced FCDL:

DR1: The FRN references the state replacement spin, SPIN number 143999999, as the service provider. The state replacement spin can be used in the following instances: (1) there is an expiring State Master Contract; (2) a FCC Form 470 posted to USAC's website for 28 days by a state agency or (3) its authorized agent must establish the competitive bidding for the expiring state master contract. The FCC Form 470 385980000989925 cited in this FRN was not posted by your state agency or its authorized agent. Therefore, the state did not establish the competitive bidding for this funding request.

Introduction

DublinCity School District disagrees with USAC's denial decision of our Funding Year 2012 application referenced above for cellular phone services citing a State Replacement Contract. We believe our application complied with the FCC's requirements and intent for permitting applicants to obtain services from a state master contract when citing the applicant's posted FCC Form 470. Additionally, we believe based on our research that USAC/SLD's State Replacement Contracts website guidance that requires the applicants to cite a FCC Form 470 posted by a state agency or authorized agent if citing the State Replacement Contract Service Provider Identification Number (SPIN), inappropriately disallows applicants from using the State Replacement Contract process when the applicant cites their own FCC Form 470 for a selected state master contract that expires during the funding year. Therefore, we request the FCC reverse USAC's denial decision and/or issue a waiver of USAC's guidance and/or direct USAC, as appropriate, to change their guidance to allow for applicants that select a state master contract citing their own FCC Form 470, to utilize the State Replacement Contract procedures.

Background

Dublin City School District posted an FCC Form 470, Description of Services Requested and Certification Form 470 and an associated Request for Proposal (RFP) on 1/30/2012 which initiated a competitive bidding process for district-wide cellular phone services (see Attachments 2 & 3). After making the 470 and RFP available to vendors the required 28 days (both were available 31 days) and conducting a compliant competitive bidding process, the district received no bids. Therefore, as per SLD's guidance when no bids are received (see Attachment 4) DCSD sought a bid by using the existing Verizon state contract as a bid, we conducted a bid evaluation of the state contract to ensure it was cost effective (see Attachment 5), and selected the Verizon state contract as per SLD's State Master Contracts guidance (see Attachment 6) which states:

"If the applicant files an FCC Form 470 and considers a state master contract as one of the bids:

- The applicant must follow a competitive bidding process pursuant to FCC requirements and state and local procurement law. Price must be the primary factor - that is, it must be weighted more heavily than any other factor.*
- If the applicant selects the state master contract as the most cost-effective alternative, the applicant is required to follow the applicable provisions of the state master contract, state contract law, and state and local procurement laws. The signed state master contract between the state and the service provider meets the FCC signed contract requirement.*
- The applicant cites its own FCC Form 470 on its FCC Form 471"*

Since the state master contract was expiring 12/31/12 and the state advised they intended to rebid this contract, DCSD selected both the existing Verizon state contract (GTA000187-010) and the new State Replacement Contract for Funding Year 2012 in our Vendor/State Contract Selection letter (see Attachment 7). This selection was consistent with SLD's State Master Contracts guidance (Attachment 6), which states that *"If an applicant files its own FCC Form 470 and chooses either a new or a pre-existing state master contract as the most cost effective bid, the applicant should record its decision to purchase off the state master contract after the bidding process is complete and to record the date of this memorialization as the contract award date on the FCC Form 471"*. Additionally, in selecting the state contract after completing a compliant competitive bidding process (required by FCC 97-420), DCSD was also complying with the State Department of Georgia, Office of Planning and Budget

Georgia Technology Authority's Policy Number 4 (see Attachment 8) which requires *"When an enterprise (i.e. or statewide) contract is available, the agency must utilize such contract(s) unless granted a written exception by the state government entity overseeing such contract."*

After completing our selection, DCSD completed the application process and filed an FCC Form 471 Application, #865085 (Attachment 9), with two Funding Request Numbers (FRNs 2356346 and 2356358) citing DCSD's FCC Form 470# 385980000989925, which established the compliant bidding process and resulted in the district's selection of the state master contract. FRN 2356346 cited the state master contract using Verizon's SPIN for the period of 7/1/12 – 12/31/12 and the second FRN, #2356358, cited the state contract State Replacement Contract SPIN (#143999999) for the period of 1/1/13 – 6/30/13, as per SLD's State Replacement Contract guidance, Scenario B (see Attachment 10).

During the application review process DCSD received questions from SLD's Program Integrity Assurance (PIA) department about the FCC Form 470 associated with FRN 2356358 and responded to those questions (see Attachment 11) stating that the district had complied with SLD's State Master Contract and State Replacement Contract guidance using the *establishing* FCC Form 470. This exchange was followed by an email from PIA advising the district that PIA had completed their review and intended to deny the State Replacement Contract funding request, FRN 2356358, because the *"establishing FCC Form 470 must be filed by the state agency that entered into the original State Master Contract"* (see Attachment 12). We responded PIA's email disagreeing with their denial assessment (see Attachment 13). Subsequently, USAC/SLD denied Application 865085, FRN 2356358, the funding request which sought cellular phone services citing the State Replacement Contract SPIN and the applicant's posted FCC Form 470.

Discussion

As per the FCC's Fourth Order on Reconsideration, FCC 97-420 (Attachment 14), "If a third party has negotiated a master contract without complying with the competitive bid requirement, then an eligible entity must comply with the competitive bid requirement before it may receive discounts or reduced rates for services purchased from that master contract", which Dublin City Schools did. SLD's guidance for State Master Contracts (Attachment 6) echoes the FCC's requirements and indicates applicants are permitted to select a state master contract and file for services from the state master contract citing the applicant's posted FCC Form 470 as long as the applicant posted its own 470, considered the state master contract as one of the bids, and followed a competitive bidding process pursuant to FCC requirements and state and local procurement law, with price of the eligible services as the primary factor, which Dublin City Schools did. The "State Master Contracts" guidance also states applicants can select "a *new* or a *pre-existing* state master contract as the most cost effective bid" and the State Replacement Contracts guidance permits applicants to cite the *pre-existing* or expired contract to file a State Replacement Contract funding request while waiting for the state to award a new contract to replace the expiring contract.

Dublin City School District posted its own FCC Form 470, conducted a compliant competitive bidding process, and selected the *"pre-existing"* state contract through the state contract's expiration date of 12/31/12 and, since the state indicated its intention to rebid this contract, selected the *"new"* State Replacement Contract for the remaining period of 1/1/13 – 6/30/12. We believe our application complied with the FCC's requirements and intent for obtaining services from a state master contract when citing the applicant's posted FCC Form 470. We agree with the PIA reviewer's assessment that the establishing FCC Form 470 cited in our FCC Form 471 was not filed by the state agency that entered into the original State Master Contract as per SLD State Replacement Contracts guidance. However, this occurred because SLD's State Replacement Contracts guidance seems to conflict with and appears to be inconsistent with their State Master Contracts guidance. These conflicts made the distinction between the state's posted FCC Form 470 in the State Replacement Contracts guidance as the *"establishing FCC Form 470"* and our applicant posted FCC Form 470 as the *"establishing FCC Form 470"*, unclear when we filed our funding request citing the State Replacement Contract SPIN. We question whether the SLD's State Replacement Contract procedures correctly reflect the FCC's published Orders and position on permitting applicants to select state master contracts and suggest that the State Replacement Contracts procedures should

apply to both scenarios: where the state posted the FCC Form 470 and where the applicant posted the FCC Form 470.

As indicated above, **according to the FCC, the state's competitive bidding process and the applicant's competitive bidding process, when compliant with the FCC's requirements, are equally acceptable for selecting a state master contract.** However, the State Replacement Contracts guidance (Attachment 10) for selecting a state contract limits the State Replacement Contracts procedures to only situations where the state posted the originating FCC Form 470 that established the *expiring/expired* contract and where the state posted the FCC Form 470 for the *new* State Replacement Contract. Given the fact that the FCC recognizes these for selecting state master contracts, it is unclear why an applicant's posted FCC Form 470 and compliant competitive bidding process are insufficient to support a State Replacement Contract application. Therefore, preventing applicants who cite their own FCC Form 470, from utilizing the State Replacement Contract process for state contracts that expire during the funding year, seems inappropriate and a potential gap in the published guidance. The SLD State Replacement Contract guidance seems to conflict with the FCC's policy on master contracts and seems inconsistent with SLD's State Master Contract guidance as well.

Additionally, disallowing applicants from filing State Replacement Contract applications citing the applicant's FCC Form 470 is further confusing when you consider a concession SLD makes for State Replacement Contract applications citing the state's posted Form 470. Specifically, if after the 471 filing window closes, the state decides not to award a State Replacement Contract, SLD's procedures permit applicants who filed a State Replacement Contract funding request citing the "state's" posted FCC Form 470, to continue services with the existing service provider from the *expired* contract. The following is an extract from one of PIA's requests to an applicant who had filed a State Replacement Contract application citing the state's posted Form 470 (see Attachment 15):

"If the State has decided not to pursue a State Replacement Contract, you may continue with the existing service provider using the former SPIN. You should reference the original state FCC Form 470 that established the services for the expiring State Master Contract. Please provide third party documentation indicating that the State is not pursuing the State Replacement Contract during this funding year, the former SPIN and the original state FCC Form 470."

This guidance was also briefed in at least one of SLD's previous year's Applicant Training sessions.

The option to continue services on the *expired* contract, or on a month-to-month basis, as appropriate, in the event the state decides not to award a new contract, is **ONLY** offered to applicants who cited a FCC Form 470 posted by a state agency or its authorized agent. Why in the case of where the state posted the FCC Form 470, is the applicant permitted to continue services? Whereas, the applicant, who posted their own FCC Form 470 and conducted their own competitive bidding process before selecting the state contract, is not permitted to utilize the State Replacement Contracts process or be permitted to continue services after the state contract expires, as offered to applicant's who cited the state posted FCC Form 470. We recognize these procedures were developed by SLD to assist applicants in an unpredictable situation and to avoid leaving applicants in a situation they have no ability to rectify during the execution of the funding year and we appreciate these efforts. However, this brings into question further the distinction made by USAC/SLD between the state posted FCC Form 470 and the applicant posted FCC Form 470 for the purpose of filing a State Replacement Contract application.

Summary:

The basis of USAC/SLD's denial was that DCSD did not comply with the State Replacement Contracts guidance when we filed our State Replacement Contract application, FRN 2356358. According to USAC/SLD's funding denial decision, *"The FCC Form 470 385980000989925 cited in this FRN was not posted by your state agency or its authorized agent. Therefore, the state did not establish the competitive bidding for this funding request."* However, as outlined above, we did comply with the FCC's state master contract requirements and USAC/SLD's requirements for selecting a state master contract. Therefore, the distinction SLD makes in their State Replacement Contracts guidance between when the state posts the FCC Form 470 and the applicant posts the FCC Form 470 as the establishing FCC Form 470 cited in a State Replacement Contract application is unclear. According

to the FCC, the state's competitive bidding process and the applicant's competitive bidding process, when compliant with the FCC's requirements, are equally acceptable for selecting a state contract. Therefore, preventing applicants who cite their own FCC Form 470 from utilizing the State Replacement Contract process for state contracts expiring during the funding year seems inconsistent and a potential gap in USAC/SLD's published guidance. Therefore, we request the FCC reverse USAC's denial decision and/or waive the deviation from USAC State Replacement Contracts guidance, as appropriate, and fund Dublin City School District's FY2012 FCC Form 471 Application# 865085, FRN 2356358, for \$27,189.92. Additionally, if appropriate, request the FCC direct USAC to change their State Replacement Contract guidance and procedures to allow applicants that select a state master contract citing their own FCC Form 470 to utilize the State Replacement Contract procedures.

Thank you for your consideration. We greatly appreciate the opportunity to participate in the E-rate program. If you have any questions please contact Bob Blalock at (334) 792-8331.

Sincerely,



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Attachments (15):

1. USAC, Schools and Libraries Division, Funding Commitment Decision Letter (Funding Year 2012: 07/01/2012 – 6/30/2013), Form 471 Application Number 865085 (Extract), Dated 8/21/12 (4 pages)
2. FCC Form 470, Schools and Libraries Universal Service Description of Services Requested and Certification Form 470, Application Number 385980000989925, Dated 1/30/12 (4 pages)
3. Dublin City School District, Technology Department, Erate Information, FY2012 Cellular Services RFP Website Proof of Posting Snapshot, Dated 1/30/12
4. USAC, Schools and Libraries Division, Construct an Evaluation Guidance, Re: "No Bids Received?", www.usac.org/sl/applicants/setp03/evaluation.aspx (3 pages)
5. Xxxxx
6. USAC, Schools and Libraries Division, State Master Contracts Guidance, www.usac.org/sl/applicants/setp03/state-master-contracts.asp (2 pages)
7. Dublin City Schools, State Contract Selection Letter, Re: Verizon Wireless & The State Replacement Contract, Dated 3/13/12
8. State Department of Georgia, Office of Planning & Budget, Georgia Technology Authority, Policy Number 4, Subject: Rules, Regulations, & Procedures Governing the Acquisition & Use of Telecommunications Services and Equipment , Dated 12/16/08 (11 pages)
9. FCC Form 471, Schools & Libraries Universal Service Description of Services Ordered & Certification Form 471, Application# 865085 (FRNs 2356346 & 2356358 Extract) (5 pages)
10. USAC, Schools and Libraries Division, State Replacement Contracts Guidance with Scenario B, www.usac.org/sl/applicants/setp03/state-replacement-contracts.aspx (4 pages)
11. Dublin City Schools Letter, Re: Response to Program Integrity Assurance 7/27/12 Letter, Dated 8/3/12 (3 pages)

12. USAC, Schools and Libraries Division, Program Integrity Assurance Email, Subject: Regarding FCC Form 471 865085 – Dublin City School District, Dated 8/6/12 (2 pages)
13. Dublin City Schools Letter, Re: Response to Program Integrity Assurance 8/6/12 Email, Dated 8/15/12 (3 pages)
14. Federal Communications Commission, Fourth Order on Reconsideration (FCC 97-420) (Extract), Dated 12/30/97 (10 pages)
15. USAC, Schools and Libraries Division, Program Integrity Assurance Letter, Re: State Replacement Contracts Status, Dated 7/13/12 (2 pages)